SPEECH

OF

MR. CAMPBELL, OF SOUTH CAROLINA,

ON THE

REASONS FILED BY THE PRESIDENT

FOR

APPROVING THE APPORTIONMENT BILL:

DELIVERED IN THE HOUSE OF REPRESENTATIVES, JULY 6, 1842.

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SPEECH.

A motion to "refer to the select committee appointed on that subject, an authenticated copy of the reasons filed in the State Department by the President of the United States for approving the apportionment bill," being under consideration—

Mr. CAMPBELL said that, in advocating the reference proposed, he was confident he was influenced by no feeling of hostility to the President. So far from it, he thought the whole country owed to that eminent individual a debt of gratitude—not only for having, with the self-devotion of the Roman Curtius, twice saved it from the yoke of a United States Bank; but for having recently prevented the spirit of the Constitution, which contemplates the unbiased exercise of the opinion of the Executive in the approval of bills, being violated in his person, through the attempt that was made to enforce his approval of measures which he was known to be opposed to, by incorporating those measures in a revenue bill, which it was supposed that the urgent necessities of the treasury would compel him to sanction.

However much the majority here might differ from the President in relation to these acts, it appeared to him that, when the excitement of party had subsided, all, in a calm review of these transactions, would be compelled to award to him the praise of an uncompromising adherence to principle in the midst of no ordinary trials, a firmness of resolve, and a conscientious discharge of duty in the administration of the Government, that entitled him to respect.

Mr. C. had made these remarks to show that he was influenced by no personal or political prejudice in disapproving the course which the President had adopted in approving the apportionment bill—a course which he conceived to be not only unauthorized by the Constitution, but was a dangerous (though he did not doubt an unintentional) encroachment on the privileges of the House.

The language of the Constitution is, that—

"Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to reconsider it."

The reason of the difference thus prescribed in relation to the duties of the President, when he approves and when he does not approve a bill, must be manifest to every gentleman on the slightest consideration. His declining to approve a bill, is not the absolute negative of the Roman tribune; it is only a qualified negative, wisely provided as a safeguard against inconsiderate legislation, and produces the necessity of a reconsideration; in which, if the bill receives the approbation of two-thirds of both Houses of Congress, it becomes a law, notwithstanding his objections. In this reconsideration, made necessary by the express command of the Constitution, it is certainly proper that the objections of the President should be in our possession, in order that they may be fully examined. But there is no language in the Constitution which justifies him, in approving a bill, either to assign his reasons for so doing on the bill itself, or to file them in the archives of the Government; and, notwithstanding the ingenious argument of the gentleman [Mr. CUSHING] who has just taken his seat, there is nothing in its spirit which justifies him for so doing. The gentleman had argued that the "President is possessed, in part, of legislative power; because his co-operation is necessary to the creation of a law, unless, after his veto, it is passed by a majority of two-thirds of both branches of Congress; that the members of either House assigned their reasons for approving a bill;" and inquires "why the President should not be allowed the same privilege?" Without altogether concurring in, or altogether objecting to, the exposition given by the gentleman of the nature of the powers vested in the President, it was sufficient for him to say that the members of neither House of Congress claimed or exercised the right to file their reasons in the public archives for approving or opposing a bill. He did not object that the President should assign his reasons for approving a bill, either in communications to his friends, or through the public press, to the country. The press was as open to him as it was to any citizen. He had indeed been told, the moment before he rose to address the House, that Gen. Jackson had intimated, through the columns of the Globe, in 1836, that he intended to assign his reasons to the country, through the press, for approving the distribution act of that year.

The gentleman [Mr. CUSHING] had also argued that the President might be considered as "possessing judicial power," which he illustrated by his right to approve or disapprove the sentences of courts-martial. That power, however, if judicial it may be called, Mr. CAMPBELL contended must be con-

fined, within the limits of the Constitution, to the approval or disapproval of sentences of courts-martial; and does not authorize the President, clothed with authority and patronage, at the moment of approving a law, *to file an exposition of his reasons for so doing—giving, perhaps, a construction to the law*, by which the courts and juries of the country may be overawed, or intimidated, or in some other manner influenced, in the independent discharge of their duties.

To show conclusively the impropriety of the course adopted by the President, let us suppose that, in the moment of approving a criminal law, he should file an exposition of his reasons for so doing in the Department of State, giving a construction to it different from the construction afterwards given by the court. An individual is indicted under this law, tried, found guilty, and sentenced to death. He applies to the President for pardon. He says to him: "Sir, according to the construction which you placed upon the law, and filed in the archives of the country at the moment of signing it, I would not have been found guilty; but the courts have construed it differently, and I am sentenced to die. To you is confided the pardoning power; and had it not been for the prospect of impunity held out to me by your act, I would never have committed the deed for which I am condemned." No matter what change may have taken place in the President's opinion in relation to the proper construction of the law, he would be bound in honor, in religion, and in humanity, to pardon the individual, who, perhaps, without this unauthorized act of his, would never have been guilty of the crime for which he was condemned. Thus you see that, by this course, the President might not only exercise an indirect influence over the courts, but destroy his own independence in the administration of the laws.

But why should we suppose cases of aggravation, when there is not one in the whole catalogue of laws, in which such an act on the part of the President could be so alarming as in the present? The apportionment law, for approving which he has filed his reasons in the State Department, is an election law, intended exclusively to regulate the elections of the members of this House. Under the Constitution, each House is the exclusive judge of the "qualifications, returns, and elections of its members." Here, however, is an interpretation put upon the law by the President, expressing a strong doubt of its constitutionality, which is calculated to influence the judgment of members, in deciding upon elections held under it. With such jealous watchfulness has this House heretofore guarded its privileges, that, rather than allow the other branch of the Legislature to participate so far as even to give its sanction to rules of evidence to govern cases of contested elections, it has submitted for many years to the great inconvenience of having no fixed rules whatever on that subject; but each House of each Congress establishes regulations for the taking and admission of evidence applicable to its own elections, as the cases arise. Hence, as gentlemen are aware, contesters frequently come in without a particle of admissible evidence in support of their claims. The Committee of Elections prescribe rules which are sanctioned by the House. The contesters return to their respective States, to attend to the taking of evidence; and the long session has sometimes almost expired before the elections are determined. Shall we, who have hitherto guarded our privileges on the subject of elections with so much jealousy, allow this act of the President to pass, without even a protest?

He congratulated the House upon the prospect of having the subject referred to a committee, with such an experienced and well-qualified chairman as the gentleman from Massachusetts, [Mr. ADAMS.] He hoped that the whole matter would be inquired into in all its bearings, and that the committee would report what measures we should adopt.

When the apportionment bill was returned to us a second time from the Senate, with the amendments of that body insisted on, he had, in common with many others, felt some excitement. But when he reflected (as he immediately did) that that body had an equal right with the House to legislate and propose alterations; that it was equally interested in the subject; that its members, as citizens of the different States, composed a part of that great constituent body which we represented; when he also considered that the true principle of representation consisted less in the numbers than in the due responsibility of the Representative,—he was disposed, in a spirit of compromise, to adopt a medium number. When, afterwards, a majority of the House determined to accede to the amendments of the Senate, he cheerfully acquiesced, and felt that nothing had occurred to endanger our privileges or to impair our dignity. But if the Senate, not content with amending, had proceeded, as a body, to file its interpretation of a law in the public archives, intended exclusively for the regulation of the elections of the members of this House—is there a gentleman here who would not have resented the act as an encroachment on our privileges? And can any gentleman assign a reason why such a course on the part of the Senate would be either more absurd, or less authorized by the Constitution, than on the part of the President?

The gentleman from Virginia [Mr. WISE] had, it is true, attempted to shield the President under the mantle of General Jackson, who once approved a bill, and put his reasons for so doing on it. The gentleman from Massachusetts, [Mr. ADAMS,] in reply, had shown that there was no analogy between the two cases. But, if there was, it would be no justification, for *precedent cannot sanction wrong*. The bill alluded to, was a bill authorizing certain works of internal improvement; and, among other things, the construction of a road from Detroit, in the then Territory of Michigan, to Chicago, in the State of Illinois. General Jackson approved it with a qualification, in effect, that it should not be construed as authorizing the construction of a road in a State: in other words, *he amended the bill!* Surely, no one will for a moment contend that this was a constitutional act on the part of the old hero. It was a direct usurpation of legislative power, much more palpable than the *quasi* exercise of the judicial function by Mr. Tyler, in filing on a separate piece of paper an exposition of his reasons for signing the apportionment bill; and had not Congress been so near its adjournment, (half an hour, as he was informed, of the end of the session,) it would, doubtless, not have passed unrebuked. He had no doubt whatever that both General Jackson and Mr. Tyler were actuated by fair and honorable motives; but the assumption of unauthorized legislative power in the one case, and the encroachment on our privileges in the other, are not less real than if they had been designed.

Not content with defending the President, the gentleman had, as was his custom, carried the war into the enemy's territory, and assailed the

law upon its merits. He could not, however, regard this assault as made in much sincerity; for, on reference to the journal which he held in his hand, he found, upon the question "Shall the bill be engrossed, and read a third time?" the name of his friend—"HENRY A. WISE"—recorded in the affirmative. This was after the districting clause was incorporated. Not only so; but after weeks of reflection—after having had all the advantage of the light thrown upon the subject by the discussion in the other, as well as in this branch of the Legislature—after the feature of fractional representation had also been included, and the bill had assumed the precise shape in which it became a law—the gentleman again, in effect, voted for it, when he voted against the motion of the gentleman from Maryland [Mr. WM. C. JOHNSON] to lay it on the table; the last vote taken by ayes and noes on the bill. After these repeated votes, by which this law had received his most solemn sanction, he was surprised to hear him denounce it as being passed by "a brute force," and a "Federal majority," that was endeavoring to break down the barriers of the Constitution, and trample upon the rights of the States. If it was passed by a brute force, the gentleman had added to that force the momentum of his weight. If it was passed by a Federal majority, the gentleman had lent his name to swell the very majority of which he complained. If the gentleman intended anything beyond eloquent declamation in these loud-sounding epithets, and really repented of the votes which he had given in favor of this law, he would recommend him to soothe his conscience by reading the admirable speech of his friend and colleague [Mr. S. H. BUTLER] in its support—a gentleman of as pure democratic principles, and as devoted attachment to the rights of the States, as is to be found in this House, or elsewhere. Particularly did he commend to the gentleman, "as a friend of State rights," that part of his colleague's speech where he says that he does "not wonder at the sneers constantly thrown at the doctrine of State rights, when such ridiculous pretensions are set up by men who profess to be their peculiar guardians."

Mr. C. here referred to a number of the Democratic members by name, (passing high eulogies on several of them,) who had voted for the engrossment of this apportionment bill, against which so much complaint had recently been made, and which the country was persuaded to believe was passed by a party vote. When the question was on ordering the bill to a third reading, (districting clause included,) it was voted for by several of the Democratic members. After the fractional principle had also been introduced, the following gentlemen, by voting against the motion of the gentleman from Maryland [Mr. W. COST JOHNSON] to lay the bill on the table, in effect voted for its passage:

Messrs. A. V. Brown, John Campbell, Reuben Chapman, Edward Cross, T. W. Gilmer, Charles J. Ingersoll, Wm. W. Irwin, Cave Johnson, John W. Jones, John Thomson Mason, William Parmenter, George H. Proffit, Almon H. Read, Hopkins L. Turney, Harvey M. Watterson, and Henry A. Wise—16 voting for the law.

Notwithstanding these facts, an effort was making to produce the impression that the Democratic party had voted against the measure *en masse*. The journal would show that, without their aid, the bill could not have been passed.

The gentleman from Virginia [Mr. WISE] had said that some regarded this bill as recommendatory, and some as mandatory; and that many of those voting for it would not have done so, had they considered it in the nature of a mandate to the States to district themselves. Such the gentleman from Alabama [Mr. SHIELDS] had declared to be his position.

The President's exposition of his reasons for approving the bill was not yet printed; but he had made an extract from it, from which he would read the following passage:

"One of the prominent features of the bill is that which purports to be mandatory on the States to form districts for the choice of Representatives to Congress in single districts. That Congress itself has power, by law, to alter State regulations respecting the manner of holding elections for Representatives, is clear; but its power to command the States to make new regulations, or alter their existing regulations, is the question upon which I felt deep and strong doubts. I have yielded these doubts, however, to the opinion of the Legislature, giving effect to their enactment as far as depends on my approbation, and leaving questions which may arise hereafter, (if unhappily such should arise,) to be settled by full consideration of the several provisions of the Constitution and the laws, and the authority of each House to judge of the elections, returns, and qualifications of its own members."

Thus it is obvious that the President regards this law as a command from Congress to the States. But, before proceeding to examine the construction put upon it, either by him or by the gentlemen from Virginia and Alabama, Mr. C. would request gentlemen to bear in mind that there was no question of original State rights involved in the matter. The right to send members to Congress could no more exist in a State before she adopted the Federal Constitution, and became a member of the political sisterhood, than to send members to the Parliament of England. All the power which can be exercised, either by the State Legislatures or by Congress, in prescribing "the times, places, and manner of holding elections," is conferred in the same clause of the Constitution, in language so plain, that "he who runs may read," provided he will first strip from his eyes the film of prejudice.

But the President and the gentlemen from Virginia and Alabama are wrong in the construction which they give to this law. It is neither a command nor a recommendation from Congress to the State Legislatures. They are, however, under the command not of Congress, but of the Constitution—of that Constitution under which we are here assembled, which is the bond of union between the States; which not only Congress, but the State Legislatures, are bound to obey; and which every citizen who has the heart of a patriot, and the spirit of a man, is ready to defend.

The districting clause of the law reads as follows:

"SEC. 2. *And be it further enacted*, That in every case where a State is entitled to more than one Representative, the number to which each State shall be entitled under this apportionment shall be elected by districts composed of contiguous territory, equal in number to the number of Representatives to which said State may be entitled; no one district electing more than one Representative."

Mr. C. defied the opponents of this section to point out anything in its language, or in its context, which assumed more the air of command to the State Legislatures than there was in the first. The first section prescribes the number of members to which each State shall be entitled; the second section prescribes that they shall be elected by districts; and the Constitution of the United States made it obligatory on the State Legislatures to adopt the regulations necessary to carry both into

effect. The first section cannot be carried into effect unless the second is also; for, while it remains the law of the land, elections not made in conformity to it will be null and void--unless, indeed, the doubt expressed by the President of its constitutionality, together with other suggestions, may induce the next House of Representatives to decide it unconstitutional.

The clause of the Constitution which confers on the State Legislatures as well as upon Congress all the power which they can exercise over the subject, reads as follows:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators."

This language, Mr. C. insisted, was clear, explicit, and commandatory upon the State Legislatures: it allowed them no discretion whatever. To Congress it confides a *controlling power*, to make or alter the regulations as to the times, places, and manner of holding elections for Representatives, either in whole or in part; *and to the extent that the power is exercised by Congress, and only to that extent*, are the State Legislatures relieved from the duties and obligations imposed upon them by the Constitution. They are as much bound by that instrument to adopt the necessary measures to carry this law into effect, as they would be to regulate the elections in case such a law had not been passed.

If the Legislatures of any of the States should unhappily be influenced by a predetermination to oppose this law, rather than by a calm and candid inquiry after truth, (which he did not believe they would,)--by a spirit of faction, rather than by a desire to perform their constitutional duties--there would be no limit to the objections that might be urged. If Congress were to proceed, (as the opponents of this law insist that we are bound to do, if we touch the subject at all,) and, by geographical lines, divide the States into districts; it might be urged, with just as much plausibility, that the elections cannot be made because, forsooth, Congress had commanded the States to appoint the managers of the elections, to provide the ballot-boxes, and to designate the precincts at which the elections shall be held. If Congress were to overcome these objections, by appointing the managers, designating the election-precincts, &c.; still it might be urged that it is an invasion of State rights, and the elections cannot be constitutionally held, because the State Legislatures are commanded to provide for the counting of the votes, and making other arrangements to complete the returns. Thus frivolous objections might be piled on each other, until Congress would be compelled to forego the exercise of a power clearly constitutional, (and which, for the purpose of restoring uniformity in the elections, we believe to be now necessary,) or resort to the exercise of minute and inconvenient powers. The details can manifestly be much more conveniently directed by the State Legislatures, from their better acquaintance and more intimate connexion with local circumstances; and the Constitution never contemplated their regulation by Congress, unless the State Legislatures neglected or were prevented from discharging their duties.

Mr. C. then referred to the intelligence that had been received, that each branch of the Legislature of New Hampshire (which he complimented as one of the most patriotic States of the Union) had adopted resolutions expressive of a determination not to district her territory. These resolutions, adopted before the law had passed, and which, he hoped, had resulted from the first impulse of resentment at a supposed contemplated encroachment on the rights of the States, without a deliberate examination of its provisions, he trusted would be reviewed; and that it would be the pride and pleasure of that noble State hereafter, as it had always been heretofore, to stand up in defence of the Constitution. Although she might be opposed to this law, he could not doubt that, when satisfied of its constitutionality, she would adopt the necessary regulations to have her Representatives in Congress elected under its provisions; and ready, if required by their constituents, to vote for its repeal.

In replying to the objection that Congress could not exercise part of its power over the times, manner, and places of holding elections for its members, without exercising the whole; he said it was not more reasonable than to contend that Congress could exercise no power over the raising of revenue, because it did not exercise the whole which is conferred upon it by the Constitution. The tariff bill now pending in Committee of the Whole, proposes to raise revenue only by the imposition of duties on importations; yet, however its constitutionality may be questioned in other respects, no one is so absurd as to believe that it is unconstitutional because it does not embrace in it direct taxes and excises—all of which powers are conferred in the same clause. That the controlling power confided to Congress over the "times, places, and manner" of holding elections for Representatives may be exercised at its discretion, either in whole or in part, he thought was manifest: 1st. From the language of the Constitution. 2d. From the proceedings of the Federal convention that framed it. 3d. From the proceedings of the State conventions in adopting it; particularly from the resolutions of seven out of the original thirteen, indicating a wish that the Constitution should be so amended as either to take the power entirely from Congress, or modify its exercise; and, 5th. From the expositions given to it before and at the time of the adoption of the Constitution, both by its opponents and advocates.

He would not detain the House to read various extracts to sustain this view; yet he could not refrain from quoting the remarks of one of the most talented and influential opponents of the Constitution—Patrick Henry. In the Virginia convention Mr. Henry said:

"The control given to Congress will totally destroy the end of suffrage." * * * "Congress is to have a *discretionary* control over the time, place, and manner of elections. The Representatives are to be elected, consequently, when and where they please. As to the time and place, gentlemen have attempted to obviate the objection, by saying that the time is to happen once in two years, and that the place is to be within a particular district, or in the respective counties. But how will they obviate the danger of referring the *manner* of election to Congress?" * * * "The power over the manner admits of the most dangerous latitude. *They may modify it as they please.*"

This exposition could neither be controverted nor denied.

To show some of the reasons for which the power had been granted, he would not detain the House longer than to read a short extract from the remarks of one who had emphatically been called the "Father of the Constitution." In answer to an interrogatory submitted by Mr. Monroe, in the Virginia convention, Mr. Madison said—

"It was found impossible to fix the time, place, and manner of the election of Representatives, in the Constitution. It was found necessary to *leave the regulation of these, in the first*

place, to the State Governments, as being best acquainted with the situation of the people, subject to the control of the General Government, in order *to produce uniformity* and prevent its own dissolution."

It would thus be perceived that the object of granting this power to Congress was to produce uniformity, and prevent a dissolution of the Union. That it should not be wantonly and unnecessarily exercised, all would admit. But can any gentleman, in candor, say that its exercise is not now necessary, in order to effect one of the principal objects for which it was granted--to wit, *uniformity?* Look around, and behold the Representatives of the people of seven States assembled in this hall, elected by general ticket, and enabled to concentrate their entire respective strength upon every question of importance; while the people of the nineteen other States, are represented by districts, reflecting every shade of political opinion entertained by those they represent and frequently so divided upon important questions as almost entirely to neutralize their votes. If Congress does not discharge its duty in relation to this subject, and the seven States which now elect by general ticket do not return to the district system, the other States, in self-defence, will be compelled to adopt the general ticket, even against their unbiased wishes. In the great State of Pennsylvania, and in Maine, such changes in their respective systems were suggested shortly before the passage of this law. The contagion would extend; State after State, in rapid succession, would adopt it in their elections; and the power of Congress to exercise a control over the subject would forever be gone. The States would be virtually represented as States, in both branches of Congress; and the democratic principle of the Government be extinguished, without hope of resuscitation—the voice of minorities in the different States would be silenced in our deliberations—all questions of importance would assume a sectional character—the North voting *en masse* against the South, the South *en masse* against the North; and the people of the minority section would thus be made the "hewers of wood and the drawers of water" to the majority section of the Union, until compelled to seek refuge from oppression in its dissolution.

Mr. C. could not suppress an expression of regret at the efforts which had been made to give to this subject the aspect of a party question. He had introduced the resolution, which was the origin of the districting clause, without inquiring whether its adoption might or might not probably tend slightly to the advantage of either one party or the other, in one or two of the States, at the next election for Representatives. Although voting upon all questions of importance as, according to the suggestions of his own mind, they were calculated to affect the rights and interests of his constituents and country, even when those suggestions separated him from his political friends, he professed to be, and was regarded, he believed, by all, as a member of the Democratic party. Looking upon this, however, as a great measure of reform, important, if not essential to the preservation of our institutions in their purity, he could not consent that his course upon it should be paralyzed by the petty, temporary consideration that it might, perchance, be the means of electing a few Whigs from some States possessing Democratic majorities; which States might, by the general ticket, send all their members of the same political faith; or the reverse, in relation to one or two Whig States.

He also expressed his disapprobation of the efforts made by the party press, in this city and elsewhere, to produce in the State Legislatures a spirit of resistance to this law. When these agitators are convinced—as they may be, by reference to our journal—that the districting clause could not have been inserted, in the first instance, without Democratic votes; and that the motion to lay the bill upon the table—the last vote taken by ayes and nces on the subject—was defeated by Democratic votes; he hoped that they would be more discreet in their denunciations. This motion to lay on the table was defeated by 16 majority. For the motion 22 Whigs voted—against it 12 Democrats, and 4 who are included neither in the Whig nor Democratic ranks as such, but are known as the supporters of the present Administration; professing, and he believed truly intending, to go for the country, independent of party.

Had the Democrats who voted against this motion voted for it, the bill would have been laid on the table by a majority of eight votes. Had the Democrats and Administration men who voted against this motion voted for it, the bill would have been laid on the table by a majority of sixteen votes. Thus it was evident that the bill was carried, not by an exclusive party vote, but that it received a respectable support from every party in the House; and that without the support of a portion of the Democratic party, it could not have been passed at all in its present form. In addition to this, it may be remarked that there were three gentlemen of the Democratic party, and one Administration man, who voted for the engrossment of the bill, (the districting clause included,) that either voted for the motion to lay on the table, or did not vote on it at all.

Except in alluding to the question of privilege, and the restriction which he conceived to be imposed, both by the letter and spirit of the Constitution, on the President, in the approval of bills, Mr. C. had not extended his remarks beyond a reply to the construction placed by the President on the districting clause, an answer to the attacks made upon the law by one of the gentlemen who defended him, and a slight reference to the repeated attempts made by a portion of the press to excite a spirit of opposition to it. He would now briefly reply to that part of the exposition which related to the constitutionality of the feature of fractional representation embraced in the law, but could add nothing to the remarks which he had the honor to submit to the House upon that subject when it was under consideration. He would, therefore, conclude by expressing the hope that many returns of the glorious anniversary of American Independence, just passed, would witness the Representatives of the people of the States assembled in this hall, consecrated to that independence, elected in conformity to the provisions of a law which, however much reviled, was intended, and he believed calculated, to restore uniformity in elections, and equality in representation; without which, the form of our Government may remain, but its spirit will have departed.